



## Facing the realities of China's growing role

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**The current and former secretaries for justice defended and promoted Hong Kong's independence and neutrality on legal matters at Hong Kong Arbitration Week as China grows its international arbitration presence.**

Hong Kong's Secretary of Justice has promoted its role as a bridge between the West and China and of the importance of the special administrative region's (SAR) legal system, while her predecessor has again defended its neutrality, as discussion at Hong Kong Arbitration Week has turned to China's role in international dispute resolution and debate over the rule of law.

Speaking at the ADR in Asia Conference hosted by the **Hong Kong International Arbitration Centre** (HKIAC) on Wednesday, **Teresa Cheng SC** said "connecting and excelling" is what Hong Kong does, acting as a link to the rest of the world. It is one of 11 regions, consisting of nine cities and the Hong Kong and Macau SARs, which make up the Greater Bay Area, otherwise known as the Pearl River Delta, China's competitor to Silicon Valley.

According to **Hao Fei** of the **Guangzhou Arbitration Commission**, speaking at a separate HKIAC event the previous day, the Greater Bay Area includes an arbitral alliance and plans for an online dispute resolution service, reliant on technology including facial recognition, blockchain-based document verification, mobile document delivery and AI arbitral awards.

Cheng said the Greater Bay Area presented “immense opportunities”, given its combined population of 69.6 million people and a GDP of USD 1.5 trillion, which could rise as high as USD 4.6 trillion over time.

This combined with the Belt and Road Initiative (BRI) and Hong Kong's free trade agreement with the ASEAN region are important pillars of its development, she said, and online dispute resolution was one of the areas of innovation that she identified as important to its future role.

Despite this closer interaction with mainland China, Cheng said Hong Kong ranked ninth in the World Economic Forum's judicial independence rankings in 2016-17, although it has dropped to 13th in the last year, and she reported that it had risen from 69.9% to 93.8% on the **World Bank's** rule of law index in the first 20 years since the handover to Chinese rule.

## **LAW RULES, OKAY?**

Cheng's defence of the rule of law in Hong Kong came one day after the annual **Harbour Litigation** lecture, where **Meg Utterback** of **King & Wood Mallesons** had explained that the PRC's conceptions of rule of law had come from a different tradition in which law and rights are awarded from the top down, and that today “China has its own rule of law”, one that has adopted some western characteristics but given them a Chinese angle.

As such, Utterback said that it was up to western lawyers to adapt to the Chinese way of thinking, rather than waiting for China to completely adopt the Western approach.

Echoing Monday's remarks by practitioners including **Justin D'Agostino** of **Herbert Smith Freehills** that predicted there will be more use of mediation, Utterback also expects other trends to include less use of the Western discipline of cross-examination, a different approach to use of evidence, given the large number of non-western countries where more business is done with mobile devices.

Additionally, she said there would be more use of PRC law as the governing law of contracts, as well as a greater role for the countries of Belt and Road in international law.

The arbitration world needs to be open-minded and open to discussion, Utterback concluded.

## **FACING DOWN CONCERNS**

Speaking just minutes before Cheng, her predecessor, **Rimsy Yuen SC** argued that “irrespective of one's views” on the subject, the recent “concern and discussions and debate” at home and abroad over the government's refusal to renew the visa of Financial Times correspondent Victor Mallet was in fact “proof that Hong Kong still has free speech and free media” and said that rule of law is “very much” alive.

He asked that anyone who felt the episode had affected Hong Kong's reputation should reconsider, and was emphatic that it had no impact on HKIAC or the SAR's justice system, which is home to an “independent and high-quality judiciary”, and he insisted that he had “absolutely no doubt that we are fine”, mirroring his [comments on Monday](#) where he defended Hong Kong's neutrality.

## **ARBITRATION AS SOFT POWER**

Against that backdrop, it was also noteworthy that Cheng picked out Hong Kong's 1,500 registered foreign lawyers as a resource which the city should “cherish” as a symbol of its “soft power”, a flow of

soft power to Hong Kong that she hoped would continue.

Speaking at an event at which HKIAC's new rules were heavily discussed, Cheng also said that when it comes to the dispute resolution business "one must not be complacent" and continue to look at new methods, such as setting up new bodies to handle BRI disputes, which Hong Kong's Department of Justice is doing, and adapting to the countries and cultures along the BRI route.

She also spoke in favour of mediation, reporting that Hong Kong had this year hosted lawyers and officials from 18 countries for investor mediation training by the Department of Justice and **the International Centre for the Settlement of Investment Disputes** (ICSID), a programme it intends to repeat in 2019.

The HKIAC event also heard from the institution's chair, **Matthew Gearing QC** of **Allen & Overy**, who spoke about the new rules and its seven new council members, one of whom is Yuen, and a keynote speech from **George Berman**, a professor at Columbia University School of Law, who considered the challenges facing arbitration, and particularly investor-state arbitration today.

International arbitration, he said, "is now viewed through different lenses than it is accustomed to", noting that he does not ever remember it being caught up in so many debates, as it has come into conflict against social and political forces, and he wondered whether international arbitration should now be considered as a movement, rather than simply a legal process.

At the same event, a panel consisting of Gearing, **London Court of International Arbitration** (LCIA) president **Judith Gill QC**, arbitrator **Neil Kaplan QC**, **ICC International Court of Arbitration** president **Alexis Mourre** and vice-president of the **Singapore International Arbitration Centre** (SIAC) **Lucy Reed**, considered the work of arbitral centres and the needs for panel appointments, while later in the day there was consideration of the issues surrounding urgent relief and summary proceedings.

## CULTURE CLASH

Separate from that between China and the West, another culture clash is playing out in international arbitration, and at an event on Tuesday, hosted by the **MCCI Arbitration and Mediation Centre** (MARC), and chaired by Kaplan, considered the clash between Africa and Asia; one that often plays out in business done in MARC's home country of Mauritius.

While the regions have much in common, there are differing approaches to practices such as timekeeping and anti-corruption, as well as clashes between civil and common law jurisdictions.

MARC recently revamped its own rules as it competes to become the pre-eminent arbitral centre in Mauritius, following the withdrawal of the LCIA from the LCIA-MIAC centre earlier this year.

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